



## 2002 CRI. L. J. 4062 :: 2002 (2) AndhLT(Cri) 231 AP

Andhra Pradesh High Court

**HON'BLE JUDGE(S):** B. PRAKASH RAO , J

B. Janakiramaiah Chetty v. A. K. Parthasarathi and others

Criminal Revn. Case No. 181 of 2002,, decided on 24/06/2002

**Criminal P.C. (2 of 1974) , S.301, S.225— Appearance by public prosecutor - Pleader privately instructed - No private advocate can be permitted to prosecute a criminal case by excluding participation of public prosecutor.**

No private advocate can take over or act exclusively for the purpose of conducting a prosecution on behalf of the State or can step into the shoes of the Public Prosecutor by excluding the participation of the public prosecutor provision under Section 225 Cr. P.C. specifically contemplates that the prosecution shall be conducted by a public prosecutor in every trial before a Court of session. Even the use of the expression "shall" also makes it mandatory and absolute one without there being any exception. Further, the same is reiterated under Section 301 (1) Cr.P.C., which allows the appearance of the public prosecutor to plead without any written authority before any Court. However, under subsection(2) thereof, it only contemplates that any private person can instruct a pleader who can act on the direction of the public prosecutor and also submit

written arguments with the permission of the Court. Therefore, it is amply clear that the role of a public prosecutor in such a case where a private pleader steps in is not totally obliterated. Having regard to the fact that the public prosecutor represents the State, which is the prosecuting authority for all the criminal trials, it is the exclusive prerogative of the State to conduct such prosecution through its agent viz., the public prosecutor and, therefore, no other person much less any other advocate has any locus or any right to plead on behalf of the prosecution and conduct the case. (Para 10, 13)

### Case Referred :

### Chronological Paras

Shiv Kumar v. Hukam Chand, 1999 (2) Andh LD (Cri) 621 : (1999) 7 SCC 467

Para No.( 11 )

Medichetty Rama Kistiah v. State of A P AIR 1959 A P 659, 1959 Cri LJ 1404 :

Para No.( 12 )

### Name of Advocates

C. Sadasiva Reddy, for Petitioner; Public Prosecutor, for Respondent No. 4.

**1. ORDER :-**The petitioner herein is the defacto-complainant, who is aggrieved against the orders passed in Cr. M.P. No. 8 of 2002 in S.C. No. 334 of 1999 dated 23-1-2002 on the file of the Assistant Sessions Judge at Puttur dismissing the application purported to have been filed under S. 301(2), Cr. P.C. seeking permission to conduct the prosecution in the main sessions case by his advocate under the directions of the Public Prosecutor.

**2.** Briefly, the facts are that on the complaint filed by the petitioner for the offences punishable under Ss. 325, 331 and 120-B, IPC, the committal Court took the case as P.R.C. No. 17 of 1989 and committed the same to the Sessions Court as S.C. no. 334 of 1999. According to the petitioner, there are several other cases, including a civil suit in O.S. No. 117 of 1992 between the parties, wherein Sri S. R. Thyagarajan and Sri S. Satyanarayana, his advocates, are attending and therefore, those advocates are more acquainted with the facts and, therefore, he has instructed them to prosecute the criminal case also. Hence the petition for permission to prosecute the case by his counsel under the directions of the Public Prosecutor.

**3.** Opposing the application, the accused contended that no private lawyer including the advocates of the petitioner are entitled to conduct prosecution in view of S. 225 and S. 301(2), Cr. P.C. The case has to be

conducted only by the public prosecutor. At the most, the private lawyer can assist and file written arguments with the permission of the Court. Therefore, the application is not maintainable.

**4.** The Court below dismissed the application after considering the rival submissions.

**5.** Sri C. Sadasiva Reddy, the learned counsel for the petitioner contended that in the circumstances of the case, the Court has ample powers to grant permission to a private lawyer to conduct prosecution, though under the direction of the public prosecutor.

**6.** The learned counsel for the respondents 1 to 3 accused countered the said submissions stating that the lower Court on consideration of the provisions of the Code of Criminal Procedure has rightly dismissed the application.

**7.** Heard the learned Additional Public Prosecutor also.

**8.** Having regard to the submissions made on either side, the point which arises for consideration is, whether a private advocate can be permitted to prosecute a criminal case under the directions of the public prosecutor?

**9.** For considering the issue, the provisions referred to across the Bar are Sections 225 and S. 301(2) of the Code of Criminal Procedure, which are extracted hereunder :

"225. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

302. (1) . . . . .

(2) It in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case."

**10.** From the above, it is very clear that the aforesaid provision under S. 225, Crl. P.C. specifically contemplates that the prosecution shall be conducted by a public prosecutor

in every trial before a Court of session. Even the use of the expression "shall" also makes it mandatory and absolute one without there being any exception. Further, the same is reiterated under S. 301(1) Cr. P.C. which allows the appearance of the public prosecutor to plead without any written authority before any Court. However, under sub-section (2) thereof, it only contemplates that any private person can instruct a pleader who can act on the direction of the public prosecutor and also submit written arguments with the permission of the Court. Therefore, it is amply clear that the role of a public prosecutor in such a case where a private pleader steps in is not totally obliterated. No such person who has been permitted can virtually take over the reins of the public prosecutor. Ultimately, it is the public prosecutor alone who has to conduct the entire prosecution and the other pleader can only assist the public prosecutor. Having regard to the fact that the public prosecutor represents the State, which is the prosecuting authority for all the criminal trials, it is the exclusive prerogative of the State to conduct such prosecution through its agent viz., the public prosecutor and, therefore, no other person much less any other advocate has any locus or any right to plead on behalf of the prosecution and conduct the case.

**11.** Considering the role of a public prosecutor and his powers, the Apex court in Shiv Kumar v. Hukam Chand 1999 (2) Andh LD (Cri) 621 (SC) dealing with the provisions of Sections 301(2) and 225 of the Code of Criminal Procedure has held that it is only the public prosecutor who can conduct the case. A private lawyer can only submit written arguments with the permission of the Court after the evidence is closed and he cannot conduct the prosecution. Further, it went on to add :

"It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role, which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a Court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact he is

engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in S. 225 of the Code a dead letter."

**12.** In *M. Rama Kistiah v. State of Andhra Pradesh*, AIR 1959 Andh Pra 659 : (1959 Cri LJ 1404) a Division Bench of this Court while considering the provisions under Ss. 493 and 270 of Criminal Procedure Code, 1898 held that if the entire conducting of the case is left in the hands of the counsel for private party, the trial is irregular and a retrial was ordered. Further it adds :

"The word "conduct" in the section conveys the idea of leading and guiding; and the person who conducts the prosecution determines all important questions of policy involved in the course of the trial and the attitude to be adopted by the prosecution towards material objections raised or demands made by the accused with respect to the evidence. So long, therefore, as the Public Prosecutor leads and guides in the above sense, the pleader for the private party, no objection to such a procedure could be entertained. But if in a particular case it happens that the very conduct of the prosecution is completely left in the hands of such a pleader, then the provisions of the Code must be held to have been violated.

Unless the control of the Public Prosecutor is there, the prosecution by a pleader for a private party may degenerate into a legalized means for wreaking private vengeance. The prosecution instead of being a fair and dispassionate presentation of the facts of the case for the determination of the Court, would be transformed into a battle between two parties, in which one was trying to get better of the other, by whatever means available."

**13.** Having regard to the aforesaid principles as laid down, it is amply clear that no private advocate can take over or act exclusively for the purpose of conducting a prosecution on behalf of the State or can step into the shoes of the Public Prosecutor by excluding the participation of the public prosecutor.

**14.** Accordingly, I do not find any merits in the revision and it is dismissed.

**Petition Dismissed**